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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1833 OF 2007

Fuliben Ambavi Patel Petitioner
versus
The Sepcial Recovery and
Sales Officer, Mumbai District
Co-op. Hsg. Federation Ltd. & ors. Respondents

Subin Behramkamdin i/by D.H.Shah for petitioner.
Manjiri Parasnis i/by Vivek Sharma for respondents.

CORAM : A.M.KHANWILKAR, J.
DATE : 26th November 2007
PC :

1. Counsel for the respondent no.2 has taken preliminary objection regarding the maintainability of this petition. According to the respondent no.2, the petitioner has alternate efficacious remedy in the form of revision under section 154 of the Maharashtra Co-operative Societies Act, for which reason the remedy of writ jurisdiction ought to be eschewed. Counsel for the petitioner, however, submits that if the petitioner were to take recourse to the remedy of revision, the respondent no.2 would have raised objection regarding locus standi of the petitioner. This apprehension is misplaced for the simple reason that respondent no.2 has argued

before this Court that the appropriate remedy for the petitioner is by way of revision under section 154 of the Act. Having said that, it is not open atleast to the respondent no.2 to contend to the contrary.

2. The counsel for the respondent no.2 would then submit that all questions in the revision application on merits be left open to be decided by the revisional authority. She further submits that the contention of respondent no.2 that the petitioner cannot contend contrary to the stand taken by the original member through whom the petitioner claims to be in possession of the suit premises, be also considered by the revisional authority. Although, the counsel for the petitioner has opposed this stand of respondent no.2, in my opinion, the respondent no.2 is entitled to raise such a plea which will have to be decided by the revisional authority on its own merits in accordance with law. This is so because the said plea is available to the respondent no.2 also in the present proceedings which is in the form of Writ Petition. If that is so, there is no inhibition for the respondent no.2 to raise the same before the revisional authority which indeed will have to be decided on

MST

its own merits in accordance with law.

3. It is made clear that the revisional authority shall decide the revision on merits regarding the appropriateness of the claim raised by the respondent no.2 society in relation to the property in possession of the petitioner uninfluenced by any observation made in this order; or for that matter on account of opportunity given to the petitioner to take recourse to remedy of revision.

4. The petitioner already having deposited 50% of the recoverable dues in this Court, the Revisional Authority shall entertain the proposed revision application to be filed by the petitioner on the assumption that the requirement of pre-deposit within the meaning of Section 154 has been complied with. Inasmuch as, the deposit made before this Court be treated as compliance of that statutory requirement. The respondent no.2 will be free to withdraw the amount deposited by the petitioner on condition that the respondent no.2 and its Managing Committee shall file undertaking before this Court that they would bring back the said amount if and when directed by the appropriate authority or Court on

the conclusion of the proceedings between the parties involving the controversy regarding the recoverable dues.

5. Needless to record that respondent no.2 has assured that neither the plea of locus standi of the petitioner to maintain the revision application nor of revision being barred by limitation will be raised on behalf of respondent no.2 before the revisional authority. That assurance is accepted.

6. Interim arrangement ordered by this Court shall continue to operate for a period of two weeks from today to enable the petitioner to take recourse to the remedy of revision. It is made clear that the prayer for extension of time shall not be entertained for any reason whatsoever. In other words, the petitioner will have to file revision before appropriate authority within two weeks from today. The interim arrangement shall continue till the same is modified or recalled by the revisional authority if and when occasion arises and for a period of two weeks from the date of communication of the order to be passed in the revision, if adverse to the petitioner. Petition disposed of with liberty to the

MST

petitioner on the above terms.

(A.M.KHANWILKAR, J.)